IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

RSA.No. 930 of 2006(Y)

AS.278/2005 of II ADDL. DISTRICT COURT, PALAKKAD
OS.41/2003 of MUNSIFF COURT, CHITTUR

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: APPELLANT/DEFENDANT

SAROJINI, W/O.KRISHNANKUTTY,
RESIDING AT KARIMANNU, VALIYAVALLAMPATHY
VILLAGE, CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL

RESPONDENT: PLAINTIFF

RAMANUNNI MOOSATH,
S/O.DAMODARANUNNI MOOSAD, RESIDING AT
INDIRA MANDIRAM, KAMMANTHARA, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHESE K

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.2274/2006 IN R.S.A.NO.930/2006

25.5.2007 DISMISSED SD/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO.930 OF 2006

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Dated this the 25th day of May, 2007

JUDGMENT

Defendant in O.S.41/2003 on the file of Munsiff Court, Chittur is the appellant. Plaintiff is the respondent. Respondent filed the suit seeking a decree for recovery of possession and for injunction. Plaint schedule property admittedly originally belonged to the appellant. Respondent is contending that under Ext.A1 sale deed dated 6.11.2001 appellant sold the property to the respondent and hence he has title to the property. It was contended that though appellant promised to surrender possession of the plaint schedule property pursuant to the execution of Ext.A1 sale deed within two days from the date of its execution, she did not do so. Respondent therefore sought a decree for recovery of possession on the strength of title. Contending that appellant may trespass into the plaint

schedule property later after getting recovery possession, a decree for permanent prohibitory injunction was also sought for. Appellant in the written statement admitted execution of Ext.A1 sale deed. But it was contended that it was executed as a security and was never intended to be an outright sale. It was contended that Rs.15,000/- was obtained on loan from the respondent and Ext.A1 was executed as security for the loan on the understanding that when appellant repay the loan amount, respondent would reconvey the plaint schedule property and the sale deed was never intended to be acted upon and therefore respondent has not derived any title to the plaint schedule property under Ext.A1 and is not entitled to the decree sought for. It was also contended that respondent is not entitled to the decree for injunction.

2. Learned Munsiff framed the necessary issues. On the evidence of Pws.1 to 3 and Exts.A1 to A4 on the side of the respondent and DW1 on the side of

the appellant and Exts.C1 and C1(a), learned Munsiff found that respondent has title to the plaint schedule property under Ext.A1 and Ext.A1 was not executed as security as claimed by appellant but was an outright sale deed. A decree for recovery possession was granted. A decree for permanent prohibitory injunction was granted to take effect after the respondent takes possession of the property pursuant to the decree. Appellant challenged the decree and judgment before the District Court, Palakkad in A.S.278/2005. Learned Additional District Judge on reappreciation of evidence confirming the decree and judgment passed by the learned Munsiff dismissed the appeal. It is challenged in this Second Appeal.

3. Learned counsel appearing for appellant was heard.

4. As a caveat was lodged, learned counsel appearing for respondent was also heard at the time of admission.

5. On hearing learned counsel appearing for

appellant and respondent, the only substantial question of law involved in the appeal is formulated as follows:-

When the suit is for recovery of possession admitting that appellant is in possession of the plaint schedule property and a decree for recovery possession is granted, whether courts below were correct in granting a decree for injunction.?

6. For deciding the substantial question of law involved in the appeal, records of the courts below are not necessary especially when the learned counsel appearing for respondent fairly conceded that the decree for injunction granted is not sustainable. Hence the records are not called for. Learned counsel appearing for the appellant and respondent were heard.

7. Advocate Mr.Chitambaresh, learned counsel appearing for appellant vehemently argued that courts below did not properly appreciate the case agitated by the appellant. It was argued that under Ext.A1 36.75 cents of land in Chittur Taluk

with a substantial building worth more than Rs.2 lakhs was sold for a consideration of Rs.21,000/- only and possession of the property was not admittedly given at the time of execution of the sale deed and the mutation of the property was not carried out subsequent to the sale deed and the witnesses of Ext.A1 sale deed are the husband and son of appellant vendor which are usually the practice adopted by the money lendors and these facts would establish that Ext.A1 was not executed as a sale deed but only as security towards the loan transaction and courts below failed to appreciate the evidence in the proper perspective and therefore the findings of the courts below on that issue is incorrect and warrants interference.

7. An executant of sale deed is not entitled to challenge the sale deed on the ground of insufficiency of the consideration. The fact that attesting witnesses to the execution of the sale deed are the close relative of the executant is also not a valid ground to either suspect the

genuiness of the sale deed or to hold that it was never intended to be acted upon or that it was executed as security. Though normally possession of the property conveyed under a sale deed would be handed over at the time of execution of sale deed, especially when consideration is paid the failure to do so by itself is not a ground to hold that the sale deed was not executed as a sale deed or was executed only as security. Parties may, depending on the facts and circumstances of the case, decide that possession will be handed over later. On that ground it is not possible to hold that the sale deed was executed as security.

8. Learned Munsiff and learned Additional District Judge appreciated the evidence in the proper perspective and entered a factual finding that Ext.A1 sale deed was not executed as security but as a sale deed. The insufficiency of consideration is not a ground either to view Ext.A1 suspiciously or to hold that it was not executed as a sale deed but as security. I find no reason

to interfere with the appreciation of evidence or the findings entered on that basis by the courts below.

9. When the property originally belonged to the appellant and under Ext.A1, after receiving the consideration, the property was transferred to the respondent by an appellant, respondent has title to the property. Appellant has no better title and as no claim that the title of the respondent is barred by adverse possession or that appellant is protected by any provisions of law. Hence respondent is entitled to the decree of recovery possession granted.

10. But as rightly argued by learned counsel appearing for appellant, when the decree granted itself is for recovery possession, learned Munsiff should not have granted the decree for injunction which is to be operative only on a future date and that too depending on the fact whether respondent could successfully take delivery of the property. In such circumstance, the decree for injunction

granted by learned Munsiff and confirmed by District Judge is unsustainable and that portion of the decree is set aside.

Second Appeal is allowed in part while confirming the decree for recovery possession granted by learned Munsiff and confirmed by the District Judge, decree for injunction is set aside.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006